

1 should have been corrected by means of a simple order that amends the Decision and
2 without any action by the Company. Obviously, if an error is known to exist in a
3 Commission rate order, it should be promptly addressed to ensure that the correct revenue
4 requirement is produced. However, Staff's counsel asked the Company to file a motion
5 seeking such relief. The Company complied with such request and filed the Motion
6 seeking relief from the computational error.

7 In the Procedural Order dated November 5, 2009, all parties were directed to
8 respond to the Motion and, specifically, to address two issues: (1) whether the Motion
9 should be treated as an application for rehearing pursuant to A.R.S. § 40-253, and (2)
10 whether the computational error was also contained or reflected in the Recommended
11 Opinion and Order ("the ROO") docketed on September 23, 2009, and considered by the
12 Commission at the October 8, 2009 Open Meeting.

13 The Company was initially uncertain whether, as the moving party, it needed to
14 respond to the Motion. In addition, the Company's counsel was prevented from focusing
15 on this matter due to the need to complete and file the Company's application for
16 rehearing of the Decision, which was due on November 10, 2009. To ensure that there is
17 no misunderstanding concerning the Company's position, the Company is filing this
18 response a day after the deadline. The Company apologizes to the Administrative Law
19 Judge and to the parties for any inconvenience this delay may have caused.

20 **B. Question One: Should the Motion Be Treated as an Application for**
21 **Rehearing Pursuant to A.R.S. § 40-253?**

22 The Company does not believe that Motion should be treated as an application for
23 rehearing under A.R.S. § 40-253. The Company did not seek relief under that statute, but
24 instead cited A.R.S. § 40-252 and further indicated in the Motion that it waives its right to
25 a hearing under A.R.S. § 40-252 for the purpose of allowing corrected rates to be
26 approved promptly.

1 The Company raised the revenue shortfall as an issue in its application for
2 rehearing of the Decision, filed Tuesday. It was forced to do so, however, to preserve its
3 right to appeal pursuant to A.R.S. § 40-254.01. As previously indicated, the last day for
4 filing an application for rehearing was November 10, 2009 (i.e., 20 days after the Decision
5 was filed in the docket). Hopefully, a rehearing is not needed on an issue about which
6 there is no dispute.

7 As explained in the Motion, on pages 5-6, certain issues have been raised by the
8 corrected rates proposed by Staff, namely the ongoing \$40,000 per month revenue
9 shortfall and the decision to recover that shortfall by increasing only the Company's
10 commodity rates. However, as also stated in the Motion, the Company is willing to accept
11 this rate design and forgo any claim to interest if the rates proposed by Staff are promptly
12 adopted. The Company believes that November 20 is a reasonable date for relief because
13 (1) such date is 30 days after the date on which the Decision was filed, and (2) the
14 Commission's November Open Meeting is scheduled for November 19 and 20, 2009, at
15 which time a brief amendment to the Decision authorizing corrected rates can be
16 approved, assuming that Commission action is deemed necessary.

17 In the alternative, and only if relief is delayed, the Company requests that new rates
18 be designed under which \$190,000 of the revenue shortfall is allocated to the monthly
19 minimum charges, with the balance, approximately \$300,000, allocated to the commodity
20 rates. The Company requests that it be authorized to recover interest at the rate of 10
21 percent per annum on the revenue shortfall, which is equal to \$4,100 per month. That
22 interest rate is based on Decision No. 70667 (Dec. 24, 2008) in which the Commission
23 ordered Arizona Public Service Co. to refund any revenue over-collection to customers
24 with interest at 10 percent per annum. This relief is necessary and appropriate to maintain
25 the Company's existing rate design, which was not at issue in the rate case, and to make
26 the Company whole, if relief is delayed.

1 **C. Question Two: Was the Computational Error also Contained the ROO**
2 **and Considered by the Commission at the October 8, 2009 Open**
3 **Meeting?**

4 As explained in the Motion, the computational error was identified by the
5 Company's consultant, Mr. Bourassa, several days after the Decision was filed, and was
6 subsequently confirmed by Mr. Igwe in his communications with Mr. Bourassa. The
7 Company does not know precisely how or why the error occurred, although Mr. Bourassa
8 believes that it was caused by Staff's failure to properly adjust test year revenues to reflect
9 declines in water use by irrigation customers, primarily the golf courses served by the
10 Company (which shifted to effluent). Mr. Igwe's investigation appears to confirm that
11 belief. The Company does not know whether the same computational error also affected
12 the rates proposed in the ROO, and assumes that Staff has provided that information to the
13 Administrative Law Judge.

14 Some additional background may be helpful on this particular point. Staff's direct
15 testimony was filed on October 3, 2008. In connection with reviewing Staff's testimony,
16 Mr. Bourassa discovered that the rates proposed by Staff failed to produce Staff's
17 recommended revenue requirement. As he normally does in this type of situation, Mr.
18 Bourassa contacted Staff informally in order to minimize disputes in the case. He
19 corresponded with Marvin Millsap, who was Staff's accounting witness in the case, as
20 well as another Staff employee, Dennis Rogers, about the problem and provided Staff his
21 rebuttal rate book. He subsequently raised the issue in his rejoinder testimony, and had
22 subsequent correspondence with Mr. Rogers in December. Ultimately, Mr. Bourassa
23 believed that Staff had addressed the problem.

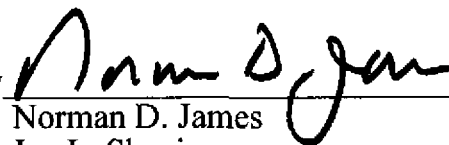
24 Unfortunately, the same problem apparently resurfaced in October 2009, when the
25 Decision was amended. And to compound matters, neither Mr. Millsap nor Mr. Rogers
26 are employed by the Commission, forcing Mr. Igwe to locate the source of the error with
 no assistance from anyone directly involved in the case.

1 In short, this is an unusual situation that has resulted in a significant revenue
2 shortfall for the Company. The Company is simply asking that the revenue shortfall be
3 addressed promptly. It also believes, based on the lack of any dispute over the revenue
4 shortfall, that further proceedings are unnecessary. A simple order amending the Decision
5 to authorize the rates proposed by Mr. Igwe, as set forth in the Motion, can be approved in
6 a matter of minutes at the November 19 Open Meeting.

7 Respectfully submitted this 12th day of November, 2009.

8 FENNEMORE CRAIG, P.C.

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11 By



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17 **ORIGINAL** and thirteen (13) copies
18 of the foregoing were filed
19 this 12th day of November, 2009, with:

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24 **Copy of the foregoing was hand delivered**
25 this 12th day of November, 2009, to:

26 Teena Wolfe, Administrative Law Judge
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